

APPENDIX E
***THUNDER BASIN NATIONAL GRASSLAND
LAND AND RESOURCE MANAGEMENT PLAN
2001 REVISION***

ROCKY MOUNTAIN REGION
USDA FOREST SERVICE

AMENDMENT 2003-01

**MODIFICATION OF MANAGEMENT DIRECTION TO AUTHORIZES A RAIL
LINE CONSTRUCTION PERMIT AND AN AUTHORIZATION ON THUNDER
BASIN NATIONAL GRASSLAND**

Digest: Modifies Management Direction to authorize rail line construction, operation and maintenance on Thunder Basin National Grassland, Wyoming

Reason for Amendment

This amendment to the *Thunder Basin National Grassland Land and Resource Management Plan, 2001 Revision*, would allow for approval of a construction permit and granting of an authorization for operation and maintenance of the rail line on portions of the Thunder Basin National Grassland, Wyoming. In October 2000, the Surface Transportation Board (STB) released a draft EIS on a proposal from the Dakota, Minnesota, and Eastern Railroad Corporation (DM&E) to expand their rail operations into the Powder River Basin. Approximately 33 miles of the proposed 280-mile expansion project are located on the Thunder Basin National Grassland. A Final EIS was published on November 19, 2001. The STB issued a decision on January 20, 2002.

As a Cooperating Agency with the STB, the Forest Service participated in the analysis and preparation of the final Environmental Impact Statement for the DM&E proposal. This analysis concluded that there was a need for the DM&E to construct and operate a rail line across portions of the Thunder Basin National Grasslands. It also concluded that approval of the project on NFS lands would be inconsistent, in some instances, with the standards and guidelines in the revised Land and Resource Management Plans (LRMP) for these units. LRMPs provide guidance for all resource management activities on a NFS unit. They provide management direction, standards, and guidelines, describe resource management practices, and identify overall availability and suitability of lands for resource management. Project level analyses, on the other hand, determine if a proposal is, or can be made consistent with management plan direction and guidance. Projects that cannot comply with direction in the plan must be found inconsistent with management direction, unless the direction is modified through amendment. In the later case, project approval and management plan amendment can be done simultaneously.

The DM&E rail line will traverse **Management Areas 2.1-Special Interest Area, 3.68-Big Game Range, 5.12-General Forest and Rangelands: Range Vegetation**

Emphasis, 6.1-Rangeland with Broad Resource Emphasis and 8.4-Mineral Production and Development for approximately 33 miles affecting approximately 950 acres for construction and 800 acres for operation and maintenance.

Standards to be Amended

This amendment to Plan Standards is made only for those lands identified in the DM&E final Environmental Impact Statement and Record of Decision issued by the STB, and only to those project decisions on those lands. Lands not analyzed must undergo analysis following guidelines set forth in 36 CFR 228.102 prior to any additional authorizations.

Standards are actions that must be followed or are required limits to activities in order to achieve Grassland objectives. Site-specific deviations from standards must be analyzed and documented in management plan amendments. Thunder Basin Revised Plan page 1-9.

Chapter 1, Standards and Guidelines

Four (4) Grassland-wide Standards are amended by waiving the Standard entirely to allow for construction, installation and operation of the DM&E Railroad under a construction permit and an authorization. **Site-specific direction from the project mitigation plan, where it applies, will be used instead.**

B. Water, page 1-9

13. Design activities to protect and manage the riparian ecosystem. Maintain the integrity of the ecosystem including quantity and quality of water. **Standard Need for Waiver**

The location of the rail line is severely restricted by grade. Although the Interdisciplinary Team and the proponent designed a route to avoid riparian areas, some riparian habitat could still be lost from direct construction activities. The integrity of the riparian ecosystem would be affected by noise from railroad operations.

Mitigation

The Corp of Engineers, although not directly involved in riparian issues, does regulate certain activities on wetlands. Appendix B, *Mitigation Requirements for the (DM&E) Railroad*, page B-2 states:

To the extent allowed by law, these mitigation requirements also incorporate restrictions and mitigation measures or environmental conditions imposed by other federal or state agencies to the extent that they are applicable to lands managed by the Forest Service.

In addition, *Mitigation Requirements for the (DM&E) Railroad*, Water and Wetland Resources, page B-6 states:

DM&E railroad shall disturb the smallest area possible around any streams and tributaries, and shall ensure proper revegetation of disturbed areas as soon as possible following construction or reconstruction activities related to this project.

F. Fish, Wildlife, Rare Plants, (plover) page 1-13

25. To help maintain suitable nesting habitat for **mountain plover**, prohibit development of new facilities within .25 miles of known plover nests or nesting areas. This does not apply to pipelines, fences, underground utilities. **Standard**

Need for Waiver

The location of the rail line is severely restricted by grade. Some of the construction and easement may occur within .25 miles of known plover nests or nesting areas.

Mitigation

The Fish and Wildlife Service will develop and require mitigation to protect plover and its habitat, refer to Appendix C, *Biological Opinion* (for Wildlife Consultation) page 27, therefore the intent of the Standard for protection of known plover nests and nesting areas is met.

F. Fish, Wildlife, Rare Plants, (plover) page 1-16

32. Vegetation management projects in suitable **mountain plover** habitat will be designed to maintain or improve plover habitat. **Standard**

Need for Waiver

Railroad operations will include vegetation treatments within their authorization to reduce the spread of possible railroad caused fires. This activity is not consistent with maintaining plover habitat.

Mitigation

The Fish and Wildlife Service will develop and require mitigation to protect plover and its habitat, refer to Appendix C, *Biological Opinion* (for Wildlife Consultation) page 27, therefore the intent of the Standard for protection of plover habitat is met.

F. Fish, Wildlife, Rare Plants, (raptors) page 1-20

76. To help prevent abandonment, reproductive failure or nest destruction, prohibit development of new facilities within the minimum distances. **Standard**

Need for Waiver

Surveys have shown that there are raptor nests relatively close to the proposed railroad. Operation of the rail line is expected to make some of the nest sites unsuitable for future use.

Mitigation

Refer to Appendix B, *Mitigation Requirements for the (DM&E) Railroad*, page B-8:

ï To help reduce disturbances to nesting and wintering raptors, prohibit the construction activities within the minimum distances (line of site) of active raptor nests and winter roost areas during the dates specified in the table belowÖ Ö .

In addition, the US Fish and Wildlife has stated that the agency would be satisfied with the mitigation outlined in their Biological Opinion for the DM&E Railroad proposal, for the Bald eagle. No mitigation was developed to satisfy other raptors identified in this Standard.

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Chapter 3, Management Area Direction

Management Area 3.68, Big Game Range

These areas are managed to emphasize **deer, elk, and pronghorn habitat**.

Two 3.68 Management Area Standards are amended by waiving the Standard or Guideline entirely to allow for construction, installation and operation of the DM&E Railroad under a construction permit and an authorization.

General, page 3-20

1. Allow uses and activities only if they do not degrade the characteristics for which the area was identified. **Standard**

Need for Waiver

The alternatives could not be made consistent with this Standard. It is anticipated that the operating railroad could result in degradation of habitat suitability and effectiveness.

Mitigation

No mitigation is proposed to resolve this issue.

Wildlife page 3-20

1. Maintain big-game habitat effectiveness at 85%. **Standard**

Need for Waiver

In areas bisected by the railroad, the effectiveness of these unique habitats could be reduced to below 85%. This project could affect .03% of the acreage using the acreage assessed for the easement or .85% of the total MA 3.68 if an assumed buffer of 5300 feet is being used for the entire corridor through MA 3.68. refer to *Management Area Direction / Consistency* table in Administrative Record.

Mitigation

No mitigation is proposed to resolve this issue.

Applicability of Amendment

This amendment is applicable to those areas within and adjacent to the corridor, which are or may be occupied and/or impacted by high to moderately high investment facilities authorized by authorizations or special use permits. These specific, relatively small areas (in relation to the overall planning area) are, or may become, primarily occupied for purposes other than renewable resource production. Although these lands are included in management areas that may differ along the length of the authorization, the authorization will be managed for complementary resource objectives, where conditions permit.

Where the authorization is inconsistent with existing management area standards and guidelines, mitigation will be developed, to the extent practicable, to minimize impacts and effect compliance with the *Thunder Basin National Grassland Land and Resource Management Plan, 2001 Revision*, and all other applicable laws. Those lands not

impacted by the construction permit and authorization shall continue to be managed under the existing management prescriptions, standards and guidelines.

NEPA Evaluation and Plan Amendment Significance Determination Process

The NEPA evaluation of this proposed amendment, as called for by 36 C.F.R. Part 219, Section 219.10(f), has been performed as part of the DM&E Powder River Basin Expansion Project EIS process, for which the U.S. Forest Service was a cooperating agency, (*DM&E Powder River Basin Expansion Project Draft EIS*, Volume VIII-B, Appendix L, page 1-17). As part of the proposed plan amendment evaluation, a determination as to whether the proposed amendment is a significant or non-significant amendment to the current plan has been made and is documented in the U.S. Forest Service Record of Decision for the Dakota, Minnesota, and Eastern Railroad Powder River Basin Expansion Project.

This amendment is consistent with the *National Environmental Policy Act* (NEPA), 40 CFR parts 1500 to 1508, and Chapters 10 and 20 of FSH 1909.15 (09/21/92). In addition, it has been determined that this amendment is a non-significant amendment under the criteria of the *National Forest Management Act* and in accordance with Forest Service Handbook 1909.12, Section 5.32.

/S/Rick D. Cables

Rick D. Cables
Regional Forester
Rocky Mountain Region

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Date